

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

NO. 2:99-cr-02009-SAB

V.

LANE WYMAN,

Defendant.

**ORDER DISMISSING
DEFENDANT'S MOTION
UNDER 28 U.S.C. § 2255
PURSUANT TO RULE 4**

Before the Court is Defendant's Amended 28 U.S.C. § 2255 Motion to Vacate Sentence, ECF No. 98, in light of the Supreme Court's decision in *Johnson v. United States*, 135 S. Ct. 2251 (2015). The motion was heard without oral argument.

On June 9, 1999, Defendant pled guilty to Count 1 of the Information Superseding Indictment charging him with Second Degree Murder in violation of 18 U.S.C. §§ 1153, 1111. ECF No. 72. Pursuant to the plea agreement, the Government recommended a sentence at the low-end of the guideline range or twenty years, whichever greater. ECF No. 73. On November 23, 1999, the Court sentenced Defendant to 262 months imprisonment after finding that Defendant's base offense level was 37 due to his prior felony convictions for residential burglary and third degree assault, both constituting crimes of violence under U.S.S.G. § 4B1.1. After a 14 month sentence reduction for acceptance of

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1 and his Criminal History Category VI, resulting in a sentence guideline range of
2 262-327 months. ECF No. 87.

3 Under 28 U.S.C. § 2255, the federal district court reviews the motion,
4 attached exhibits, and the record of prior proceedings to determine if these
5 documents “conclusively show that the prisoner is entitled to no relief.” If no relief
6 is available, the petition is dismissed; otherwise, “the court shall cause notice
7 thereof to be served upon the United States Attorney.” *Id.* Rule 4(b) of the Rules
8 Governing Section 2255 Proceedings provides that the Court may, *sua sponte*,
9 dismiss a § 2255 motion “[i]f it plainly appears from the face of the motion and
10 any annexed exhibits and the prior proceedings in the case that the movant is not
11 entitled to relief.” However, if the Court does not dismiss pursuant to Rule 4(b),
12 the Court shall order the Government “to file an answer, motion, or other response
13 within a fixed time, or to take other action the judge may order.” The Court has
14 now had an opportunity to review Defendant’s motion. Having done so, the Court
15 concludes that the pertinent documents conclusively demonstrate that Defendant is
16 entitled to no relief under 28 U.S.C. § 2255.
17

18 A one-year statute of limitations applies to 28 U.S.C. § 2255 motions. That
19 limitation period begins to run from the latest of (1) “the date on which the
20 judgment of conviction became final”; or (2) “the date on which the right newly
21 asserted was initially recognized by the Supreme Court, if that right has been
22 newly recognized by the Supreme Court and made retroactively applicable to
23 cases on collateral review.” *Id.* §§ 2255(f)(1), (f)(3). The *Johnson* opinion, on
24 which Defendant relies, was issued on June 26, 2015, *see* 135 S. Ct. 2251, and
25 made retroactive by the Supreme Court on April 18, 2016, *see Welch v. United*
26 *States*, 136 S. Ct. 1257 (2016). The Supreme Court has recognized that the
27 applicable date on which the one-year statute of limitation begins to run is the date
28 on which the right asserted was initially recognized by the Supreme Court, not the

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1 date on which it was made retroactive. *Dodd v. United States*, 545 U.S. 353
2 (2005); *see also Orona v. United States*, 826 F.3d 1196, 1198 (9th Cir. 2016)
3 (stating that the one-year statute of limitation in § 2255 motions predicated on
4 *Johnson* runs from June 26, 2015, the date the opinion was issued). While the
5 Court recognized that its ruling may have the potential for harsh results, it heeded
6 that it is Congress's duty to amend the statute. *Dodd*, 545 U.S. at 359-60.
7 Accordingly, to be timely, Defendant had to file his § 2255 motion within one year
8 of the Supreme Court's decision in *Johnson*: June 26, 2016.

9 Defendant was convicted on August 31, 1999. No appeal was taken and his
10 judgment of conviction became final. Defendant filed a pro se Motion for
11 Resentencing in light of *Johnson* on April 17, 2017. ECF No. 93. An amended
12 motion was filed on August 1, 2017. ECF No. 98. Because Defendant's § 2255
13 motion was not filed until April 17, 2017, approximately ten months after the
14 expiration of the one-year deadline, his motion is time-barred.
15

16 Accordingly, **IT IS HEREBY ORDERED:**

17 1. Pursuant to Rule 4 of the Rules Governing Section 2255 Proceedings,
18 Defendant's Motion for Resentencing, ECF No. 93, and Amended 28 U.S.C.
19 § 2255 Motion to Vacate Sentence, ECF No. 98, are **DENIED**.

20 The District Court Clerk is hereby directed to enter this Order, provide
21 copies to counsel, and **close** this file.

22 **DATED** this 4th day of August, 2017.



25 A handwritten signature in blue ink that reads "Stanley A. Bastian".
26

27 Stanley A. Bastian
28 United States District Judge

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PURSUANT TO RULE 4 + 3**